

16

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Darryl L. Jones

Petitioner

v.

Frank D. Gillis

Respondent

1-00-CV-2183

FILED  
SCRANTON

Motion For Relief From JUDGMENT or ORDER

NOV 22 2002

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Pen. DEPUTY CLERK

1. Petitioner is Darryl L. Jones, petitioner pro se, currently residing at the State Correctional Institution at Coal Township, 1 Kelly Drive, Coal Township, PA 17866-1021.
2. Petitioner seeks relief from Habeas Corpus, docket No. 00-cv-2183, pursuant to Rule 60 (b) of the Federal Rules of Civil Procedure, governing mistakes and/or excusable neglect.
3. Petitioner filed a timely, albeit errant, Habeas Corpus petition to the United States District Court for the Eastern District of Pennsylvania on June 5, 2000. see exhibit (1)
4. On July 11, 2000, that Court dismissed said petition without prejudice. see exhibit (2)
5. However, that court did not inform petitioner of this July 11, 2000 ORDER, WHICH LED PETITIONER TO ASSUME THAT

SAID PETITION WAS YET BEING PROCESSED BY THE Eastern District Court.

6. Subsequent to his release to a Community Center, on November 11, 2000, petitioner personally traveled to the Clerk's office of the Eastern District of Pennsylvania to inquire into the status of docket No. 00-3073. In response to petitioner's inquiries, the Clerk's office informed petitioner that (a) said petition was dismissed due to lack of jurisdiction and (b) without jurisdiction, the court lacked responsibility for distributing copies.

7. Petitioner then secured a copy of the July 11, 2000 ORDER with a copy of the origin petition and filed the same to the United States District Court for the Middle District.

8. This petition, docket No. 00-cv-2183, was filed on December 15, 2000. see docket sheet- exhibit (3) 2 pages.

9. On March 9, 2001, Magistrate Judge Smyser submitted a Report and Recommendation, citing petitioner's failure to comply with the one year provisions of 28 U.S.C. 2244(d).

10. On April 2, 2001, The Honorable Judge Sylvia Rambo issued an ORDER denying the petition.

11. Defendant's copy of this ORDER was mailed to:

Community Center #11  
407 N. 8th St.  
Philadelphia, PA 19123

When that ORDER reached that address, petitioner was no longer a resident there, and the mail was returned to the Court undelivered.

12. This meant that in addition to the other herein mentioned errors or mistakes, petitioner faced additional deadline penalties, albeit, without his knowledge.

13. Following numerous requests by petitioner, a copy of Judge Rambo's **ORDER** was mailed to petitioner on **December 3, 2001**.

This MOTION seeks to correct an error that in domino fashion, has precipitated additional errors and possible loss of appeal rights, to wit:

A. The errant filing to the Eastern District Court precipitated a jurisdictional issue.

B. The Court's reluctance to transfer the petition to the proper court, precipitated a mistake issue.

C. The second filing without the benefit of the time precipitated a tolling issue.

D. Petitioner's arbitrary removal from the Community Center precipitated a timely appeal issue.

Petitioner submits:

28 USCA 1631. Transfer To Cure Want of Jurisdiction.

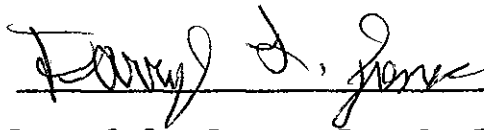
... Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any

other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed, in or noticed for the court from which it is transferred.

Petitioner avers that had the Eastern District Court exercised this Rule when the mistake was first made, **Jurisdiction, Equitable Tolling, Timely Filing, and Timely Appeal** would not now be issues needing remedy in the interest of justice.

**WHEREFORE**, petitioner prays this Honorable Court will grant the herein requested MOTION FOR RELIEF OF JUDGMENT OR ORDER.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Darryl L. Jones", is written over a horizontal line.

Darryl L. Jones, Pro Se Petitioner

November 18, 2002

See above subparagraph (b)

(c) At trial

See above subparagraph (b)

(d) At sentencing

See above subparagraph (b)

(e) On appeal

None

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding

None

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

*David L. Jones*

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

06-05-2000

(date)

*David L. Jones*

Signature of Petitioner

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DARRYL L. JONES : CIVIL ACTION  
:   
v. :   
:   
FRANK D. GILLIS et al. : NO. 00-3073

FILED JUL 11 2000

ORDER

AND NOW, this 11th day of July, 2000, upon  
consideration of Jones's petition for a writ of habeas corpus,  
and the Court finding that:

(a) The petitioner complains of a conviction in Dauphin  
County, Pennsylvania;

(b) The petitioner is currently incarcerated in SCI  
Coal Township, located in Northumberland County, Pennsylvania;  
and

(c) As neither Dauphin County nor Northumberland County  
is located in the Eastern District of Pennsylvania, there is no  
jurisdiction in this District pursuant to 28 U.S.C. § 2241(d),  
and we will therefore dismiss this case without prejudice to its  
reassertion elsewhere;

It is hereby ORDERED that:

1. This case is DISMISSED WITHOUT PREJUDICE; and
2. The Clerk shall CLOSE this case statistically.

BY THE COURT:

  
Stewart Dalzell, J.

Proceedings include all events.  
1:00cv2183 Jones v. Gillis, et al

TERMED  
PROSE

12/5/00 -- PRISONER LETTER issued as to petitioner Darryl L. Jones with Notice and Consent Form (ta) [Entry date 12/19/00]

12/15/00 1 PETITION FOR WRIT OF HABEAS CORPUS Receipt #: 111 132793 Amt: \$5.00 (ta) [Entry date 12/19/00]

12/27/00 2 ORDER by Mag. Judge J. A. Smyser IT IS ORDERED that on or before 1/19/01, the petitioner shall inform the court whether he wants to 1) have his petition ruled upon as filed; 2) if his pleading is not styled as a 2254 petition, have his pleading recharacterized as a 2254 petition and heard as such, but lose his ability to file a second or successive petition absent certification by the court of appeals as required by 28 USC 2244(b); or 3) w/draw his petition and file one all-inclusive petition w/in the one-year statutory period prescribed by AEDPA in 28 USC 2244(d). If the petitioner fails to inform the court which option he chooses, we will rule on the petition as captioned. (cc: all counsel & Ct.) (jh) [Entry date 12/28/00]

1/24/01 3 ORDER TO SHOW CAUSE by Mag. Judge J. A. Smyser Response to petition due 2/13/01 for respondents. SEE ORDER FOR FURTHER DETAILS (cc: all counsel, DA of Dauphin Cty., Attorney General & Ct.) (jh) [Entry date 01/25/01]

2/5/01 4 LETTER to Edward Marisco dtd 2/1/01 from Francis Filipi re copy of order and petition for writ of habeas corpus in the above matter. (pm) [Entry date 02/06/01]

2/6/01 5 Acknowledgement Received of show cause order dtd. 1/24/01 addressed to E. Marcico, F. Filipi, & M. Fisher. (pm) [Entry date 02/07/01]

2/12/01 7 BRIEF by respondents IN SUPPORT of motion to dismiss pet for writ of habeas corpus. [6-1]; C/S (pm) [Entry date 02/13/01]

2/13/01 6 MOTION by respondents to dismiss pet for writ of habeas corpus.; C/S, Propo, Prop.Report & Recommendation (pm) [Entry date 02/13/01]

3/9/01 8 REPORT AND RECOMMENDATION - by Mag. Judge J. A. Smyser: Recommending the petition be denied and the Clerk of Crt. should be instructed to close the file. NOTICE RE: objs. attached. Objections to R and R due 3/28/01 (cc: all counsel, Crt., Mag. & Tickler) (am) [Entry date 03/12/01]

4/2/01 9 ORDER by Judge Sylvia H. Rambo ADOPTING the REPORT AND RECOMMENDATION [8-1] of MJ. Smyser; the habeas corpus petition [1-1] is DENIED. Court declines to issue a cert of appeal; Clerk of court shall close the file Case terminated (cc: all counsel, court, orig. to security, MJ Smyser) (ma) [Entry date 04/03/01]

Proceedings include all events.  
1:00cv2183 Jones v. Gillis, et al

TERMED  
PROSE

4/16/01 10 MAIL RETURNED addressed to Darryl L. Jones containing copy  
of order dtd. 4/2/01-marked vacant. (pm)  
[Entry date 04/17/01]

8/15/01 11 LETTER to court from petitioner Darryl L. Jones RE: Status  
of case (ts) [Entry date 08/20/01]

9/10/01 12 LETTER to court from petitioner Darryl L. Jones RE: Status  
of case (ts) [Entry date 09/13/01]

10/10/01 13 LETTER to court from petitioner Darryl L. Jones RE: Status  
of case (ts) [Entry date 10/10/01]

11/23/01 14 LETTER to court from petitioner Darryl L. Jones RE: Status  
of case (ts) [Entry date 11/26/01]



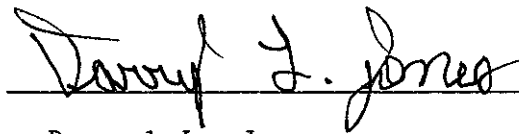
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:

VERIFICATION

I, Darryl L. Jones, pro se petitioner, swear/affirm under the penalties provided for under 18 Pa. C.S.A. 4904 that the facts contained herein are true and correct to the best of my knowledge, information and belief.

Respectfully submitted,

  
Darryl L. Jones, pro se petitioner

Dated 11/19/, 2002